



# City of Colorado Springs

Regional Development  
Center (Hearing Room)  
2880 International Circle

## Meeting Minutes - Draft Planning Commission

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Wednesday, September 11, 2024

9:00 AM

2880 International Cir., 2nd Floor, Hearing Room

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### 1. Call to Order and Roll Call

**Present:** 9 - Commissioner Briggs, Vice Chair Foos, Commissioner Hensler, Commissioner Cecil, Commissioner Rickett, Chair Slattery, Commissioner Robbins, Commissioner Sipilovic and Commissioner Casey

### 2. Changes to Agenda/Postponements

### 3. Communications

#### **Kevin Walker - Interim Planning Director**

Kevin Walker, Interim Planning Director, said the Southeast Strong Plan is in draft form and is being reviewed by neighborhood advocates and will go through the approval process sometime late this year or early next year.

AnnexCOS plan is moving forward.

On September 10, 2024, City Council approved the UDC Amendment on a 7-2 vote. This was previously denied approval by City Planning Commission on August 28, 2024.

#### **Andrea Slattery - Planning Commission Chair**

#### **Recognition of Commissioner Briggs for time served on City Planning Commission**

Chair Slattery recognized and thanked Commissioner Briggs for his time served with the City Planning Commission as this will be his final meeting. Commissioner Briggs thanked the City Council for allowing him to participate in the City Planning Commission. He thanked staff and leadership in City Planning Commission. Commissioner Briggs said the discussions and the perspectives that he has had shows how the City Planning Commission should be handled.

### 4. Approval of the Minutes

**4.A.** [CPC 2356](#) Minutes for the August 14, 2024, Planning Commission Meeting

Presenter:  
Andrea Slattery, City Planning Commission Chair

**Attachments:** [CPC Minutes 8.14.24 DRAFT](#)

**Motion by Commissioner Rickett, seconded by Commissioner Sipilovic, to approve the minutes for the August 14, 2024, Planning Commission Meeting. The motion passed by a vote of 8-0-1.**

**Aye:** 8 - Commissioner Briggs, Vice Chair Foos, Commissioner Cecil, Commissioner Rickett, Chair Slattery, Commissioner Robbins, Commissioner Sipilovic and Commissioner Casey

**Recused:** 1 - Commissioner Hensler

**4.B. [CPC 2357](#) Minutes for the August 28, 2024 Special Planning Commission Meeting**

**Attachments:** [CPC Minutes 8.28.24 DRAFT](#)

**Motion by Commissioner Rickett, seconded by Commissioner Casey, to approve the minutes for the August 28, 2024 Special Planning Commission Meeting The motion passed by a vote of 7-0-2.**

**Aye:** 7 - Vice Chair Foos, Commissioner Hensler, Commissioner Rickett, Chair Slattery, Commissioner Robbins, Commissioner Sipilovic and Commissioner Casey

**Recused:** 2 - Commissioner Briggs and Commissioner Cecil

**5. Consent Calendar**

**Motion by Commissioner Rickett, seconded by Commissioner Hensler, that the Consent Calendar be approved. The motion passed by a vote of 9-0.**

**Aye:** 9 - Commissioner Briggs, Vice Chair Foos, Commissioner Hensler, Commissioner Cecil, Commissioner Rickett, Chair Slattery, Commissioner Robbins, Commissioner Sipilovic and Commissioner Casey

**1722 Woodburn St.**

- 5.A. [NVAR-24-0006](#) A Non-Use Variance to City Code Section 7.3.304.E.2.(c) to allow a one foot (1') rear yard setback where five feet (5') is usually required located at 1722 Woodburn Street. (Quasi-Judicial)**

Presenter:  
Johnny Malpica, Planner II, Planning and Neighborhood Services

- Attachments:** [1722 Woodburn St Garage-ADU Nonuse Variances - Staff Report](#)  
[Attachment 1 - Site Plan](#)  
[Attachment 2 - NVAR-24-0006 Project Statement](#)  
[Attachment 3 - NVAR-24-0010 Project Statement](#)  
[Attachment 4 - 7.3 written interpretation - 2-8-24](#)  
[7.3.304 ACCESSORY USES](#)  
[7.5.526 NON-USE VARIANCE](#)

- 5.B.** [NVAR-24-0010](#) A Non-Use Variance to City Code Section 7.3.304.E.2.(c) to allow a six foot and four-inch (6'-4") side setback where ten feet (10') is usually required when a dwelling unit is located above the garage and the overhead door faces the alley located at 1722 Woodburn Street. (Quasi-Judicial)

Presenter:  
 Johnny Malpica, Planner II, Planning and Neighborhood Services

- Attachments:** [7.5.526 NON-USE VARIANCE](#)

**Valvoline Instant Oil Change**

- 5.C.** [CUDP-24-0013](#) A Conditional Use to allow an Automobile and Light Vehicle Repair use in the MX-M (Mixed-Use Medium Scale) zone district consisting of 0.62 acres located northeast of the intersection of Centennial Boulevard and Grand Market Point. (Quasi-Judicial)

Presenter:  
 Allison Stocker, Planner II, Planning and Neighborhood Services

- Attachments:** [CUDP-24-0013 Staff Report Draft 20240724](#)  
[Attachment 1 Project Statement](#)  
[Attachment 2 Land Use Statement](#)  
[Attachment 3 Approved Land Use Plan](#)  
[Attachment 4 Vicinity Map](#)  
[Attachment 5 PlanCOS Vision Map](#)  
[CUDP-24-0013 Presentation](#)  
[7.5.601 CONDITIONAL USE](#)

**2338 N. El Paso St.**

- 5.D.** [DVSA-24-0003](#) A Development Standards Adjustment to City Code Section 7.4.201.A to allow a twenty-two foot and six inches (22'-6") front setback where twenty-eight feet and six inches (28'-6") is required in the R-1 6 (Single-Family - Medium) zone district for a new front porch

on the existing single-family residence located at 2338 North El Paso Street. (Quasi-Judicial)

Presenter:

William Gray, Senior Planner, Planning and Neighborhood Services

**Attachments:** [Staff Report Caldwell-Loucks Front Porch](#)

[Attachment 1-Context Map](#)

[Attachment 2-Project Statement](#)

[Attachment 3-Site Plan](#)

[Attachment 4-Pre-Application Summary](#)

[7.5.525 DEVELOPMENT STANDARDS ADJUSTMENT](#)

**Humble Paws**

- 5.E. [CUDP-24-00](#)  
[03](#) A Conditional Use to allow an Animal Care Facility use in the LI (Light Industrial) zone district consisting of 20,800 square feet located at 1516 Dustry Drive. (Quasi-Judicial)

Presenter:

William Gray, Senior Planner, Planning and Neighborhood Services

**Attachments:** [Staff Report Humble Paws](#)

[Attachment 1-Zoning Map](#)

[Attachment 2- Context Map](#)

[Attachment 3-Project Statement](#)

[Attachment 4-Vicinity Map](#)

[7.5.601 CONDITIONAL USE](#)

- 5.F. [NVAR-24-00](#)  
[08](#) A Non-Use Variance to City Code Section 7.3.303.A.1.a to allow an Animal Care Facility to be zero feet (existing conditions) to any property line where 55 feet is required located at 1516 Dustry Drive. (Quasi-Judicial)

Presenter:

William Gray, Senior Planner, Planning and Neighborhood Services

**Attachments:** [7.5.526 NON-USE VARIANCE](#)

[7.3.303 COMMERCIAL AND INDUSTRIAL USES](#)

**6. Items Called Off Consent Calendar**

**7. Unfinished Business**

**8. New Business**

**Bristow-Lowell**

- 8.A. [URAP-24-0001](#) Bristow-Lowell Urban Renewal Plan (Legislative)

Presenter:

Ryan Tefertiller, Urban Planning Manager, Planning and Neighborhood Services

Jariah Walker, Executive Director, Colorado Springs Urban Renewal Authority

**Attachments:** [Bristow-Lowell URA CPC Report 091124](#)

[6.1 223121-CSURA-Conditions Survey-Bristow-Lowell Final 6-17-2024](#)

[6.2 223121-Bristow-Lowell URA Plan Final Legal 6-17-2024](#)

[6.3 223121-El Paso County Impact Report-Bristow-Lowell-Final 6-17-2024](#)

Ryan Tefertiller, Urban Planning Manager, presented the Urban Renewal Plan for Bristow-Lowell Urban Renewal District, located at the southeast edge of downtown Colorado Springs. There are six parcels located east of South Nevada Avenue along both sides of East Las Animas Street and south of East Fountain Boulevard. The property zone is PDZ/SS with 5.75 acres. Jariah Walker, Executive Director of the Colorado Springs Urban Renewal Authority, gave an overview of urban renewal designations with process and criteria. Mr. Tefertiller continued his presentation. The proposed district falls within the area which was previously in an Urban Renewal District in 1988, which expired in 2013. State statute guides the process for urban renewal which requires Planning Commission input. Mr. Tefertiller presented map guides for the area.

**Public Comment - None**

**Commissioner Questions**

Commissioner Cecil asked for an explanation on how the southeast corner near the tracks will fit into future planning around how the rails are moving on Legacy Loop. Mr. Tefertiller said the southeast portion of the district is adjacent to the rail spur that comes off the main line which goes through downtown. This area has an approved development plan for higher density, multi-residential use. Access is gained from Fountain on the north side and does not cross the rail spur. There is an easement on the southeast edge for Legacy Loop trail to cross the property. The key issue

is crossing the main line of the rail further to the south to connect into the Fountain Creek Trail system. Commissioner Cecil asked if this district would contribute to the completion of Legacy Loop. Mr. Walker said the developer has maintained that he would like to see something done with it and is working with the Parks Department, however, there is nothing on the plan or any TIF going towards that.

Commissioner Cecil asked Mr. Tefertiller for a breakdown of how many units will be provided at each level of affordability and how long it is intended to be affordable. Mr. Tefertiller read information provided by the developer. "The project will provide long-term quality, low income and workforce housing for downtown Colorado Springs. There will be 380 units between 70% and 110% AMI level with an average under 90% AMI. Phase one of Sumner house, which is just outside this district, is already open with 95 units serving 30-60% AMI. The project is designed for affordable, accessible housing, going above and beyond the minimum design building code for seniors and people with disabilities. 100% of the project will be either ADA accessible or ADA compliant, featuring 100% universal design for multi-family, one of the first in the state." Mr. Walker added the term is 30 years and the life of the URA is 25 years.

Commissioner Cecil asked why re-authorizing something in the same footprint is necessary, what was learned from the first district and what were the hardships that kept the development from happening under the first URA. Mr. Walker said while he was not here during that time but thinks the land was underutilized. He says the developer has a passion for building this type of product. There is phase one through the housing authority that has the lower-level AMI. Mr. Walker said there were financial issues that were not completed and a failed metro district that resulted in the area not being developed. Commissioner Cecil asked if it was common to do two URA's in the same footprint. Mr. Walker said it depends, City Gate, Goldhill Mesa Commercial, Southwest Downtown are all URA's. Mr. Tefertiller added the value of URA designation decreases as you get further into the 25 years. In the late 1980s when the Lowell area was established as a URA, the tool carried weight through the late 1980s and early 1990s. Different preferences for housing from the communities and residents and there may have been more risks in developing the last pieces and less value in the TIF. As districts age, they have less value, and clocks will be reset so that development can be finished out.

Commissioner Casey said he reviewed the plans and visited the sites, then said the conditions listed in the survey are vastly overstated.

Commissioner Casey said the roads are bad but seem to match the rest of Colorado Springs and he did not see evidence of illegal dumping in sites in parcels one, two and three. He said there are homeless camps and dumping along the railroad tracks in parcel five. The conditions survey used evidence of high crime in the 80903 area compared to the rest of Colorado Springs. He said any downtown area in a city will naturally have higher crime statistics. Commissioner Casey asked for comment on the issues of blight and how it substantially impairs the sound growth of a municipality. Mr. Walker said the blight condition is under the City Council purview and they will vote on it. A consultant is used and if one blight is found, it is on the books up to four years, which falls in line with the state statute. The crime methodology used falls in line with the study used from experts and will be a determining factor for votes at City Council. Commissioner Casey asked how other construction projects are able to continue without going through this process. Mr. Walker said he cannot speak for the Housing Authority, but they are tax exempt, which is a different model from the Urban Renewal Authority, which relies on capturing taxes.

Commissioner Hensler asked if the URA is not approved, what impacts does it have on the parcels or future developments. Mr. Walker said this project would not be able to move forward. Commissioner Hensler asked how many units are planned. Mr. Walker said under 400 units. Mr. Tefertiller said in the coming months, the Planning Commission will see a zone change and development plan for some of the sites. This will give the Commission an opportunity to look at the zones, setbacks, density, etc., and today is just about the urban renewal designation.

Commissioner Rickett said he has lived here since 1977 and has seen the area, and this is a fantastic continuation. He is in support of this and meets the City's comprehensive plan.

Commissioner Robbins said he is in support of this plan. He said if the area is not developed, it will get worse.

Commissioner Sipilovic said he is in support of this project as he drives through the area almost every day and would like to see the area improved.

Chair Slattery agrees that this supports the mission of PlanCOS, what the youth and environmental art side is doing, and it is a great synergy.

Vice Chair Foos said this is exactly what the city is trying to accomplish and supports the plan.

Commissioner Hensler said she also supports the plan.

**Motion by Vice Chair Foos, seconded by Commissioner Hensler, to recommend approval to City Council the Bristow-Lowell Urban Renewal Plan based on the finding that the Plan is consistent with PlanCOS, the City's Comprehensive Plan. The motion passed by a vote of 9-0.**

**Aye:** 9 - Commissioner Briggs, Vice Chair Foos, Commissioner Hensler, Commissioner Cecil, Commissioner Rickett, Chair Slattery, Commissioner Robbins, Commissioner Sipilovic and Commissioner Casey

**PTAA Addition No.1**

**8.B.** [ANEX-23-00](#) PTAA Addition No. 1 Annexation consisting of 14.12 acres located southeast of the Stetson Hills Boulevard and North Marksheffel Road intersection.  
[27](#)  
(Legislative)

Presenter:  
Gabe Sevigny, Planning Supervisor, Planning and Neighborhood Services



**Attachments:** [Staff Report PTAA\\_RGS](#)  
[Attachment 1 - PTAA - Petition](#)  
[Attachment 2 - Project Statement](#)  
[Attachment 3 - PTAA annexation- Legal Description](#)  
[Attachment 4 - PTAA - Annexation Plat 11x17](#)  
[Attachment 5 - Fiscal Impact Study](#)  
[Attachment 6 - PTAA - SOA](#)  
[Attachment 7 - Deed SSS Education](#)  
[Attachment 8 - Zone Change - Project Statement](#)  
[Attachment 9 - Exhibit A - Zone Legal Description](#)  
[Attachment 10 - Exhibit B - Zone Map Depiction](#)  
[Attachment 11 - Land Use Plan - Project Statement](#)  
[Attachment 12 - Land Use Plan](#)  
[Attachment 13 - D-49 Comment Letter](#)  
[Vicinity Map](#)  
[PTAA Formal Presentation\\_RGS](#)  
[7.5.701 ANNEXATION OF LAND](#)

Gabe Sevigny, Planning Supervisor, presented the PTAA Charter School Addition No. 1 located southeast of the Stetson Hills Boulevard and North Marksheffel Road intersection. The zone establishment is a Mixed-Use Medium Scale with Airport Overlay. Any future plans will need to be reviewed by the Airport. Standard public notice was sent out and no comments were received, however, just before Planning Commission, one email was received with concerns over traffic. Agency review was completed, all agencies are in support of this plan. Staff finds the application meeting criteria.

### **Applicant Presentation**

Nina Ruiz, Executive Consultant with Vertex Consulting, gave the PTAA Annexation presentation. The 14-acre property is located in a county enclave. This will be a STEAM Charter Academy for grades 6-12 with approximately 800 students. Colorado Springs Fire Department will be the responding agency for emergencies. The school will add jobs beyond the construction timeline. This will have a positive impact and net-zero impact on the City budget. All utilities will be extended into the property with no concerns. CSU identified a 50-foot easement that will be required for a water line. It is compatible with adjacent properties. A traffic study was done, and a right-out only access will be used on Marksheffel with a stop-controlled intersection. The first school parking lot is 1,300 feet away

from the public road.

Commissioner Rickett asked if the right-out from Marksheffel was also a right-in. Ms. Ruiz said it will be an exit only, right-out. There were discussions with City Traffic about the exit and it was identified that having both would not be a safe situation.

Ms. Ruiz said Marksheffel Road is being extended and is currently rated as an F. Once the work is completed it will have a C level rating. Some of the criteria for the application are public interest, health, safety, convenience and welfare. The school will serve the growing population for the area. It will serve as a community gathering place, STEAM education and future skilled workforce. The geologic hazard report was approved, and the drainage report indicates no impact.

Commissioner Robbins asked if Marksheffel has two lanes going north and south. Ms. Ruiz said currently it is only one lane, however, construction for two is in effect. It will be finished by the time the school will be under construction. Commissioner Robbins asked if there are any future plans for Stetson Hills to be extended up to Huber Road. She said once the adjacent development is put into production, it is anticipated that Stetson Hills will be extended further east but has not been designed yet.

Commissioner Briggs said there is already a PTAA school and asked if that school would adjust grade levels. Ms. Ruiz said the current school would adjust to Pre-K through 5th grade and the new PTAA school would be 6th through 8th grades.

Commissioner Hensler asked if Planning Commission will see a development plan in the future. Mr. Sevigny said the development plan is administrative and will not go to City Planning Commission. He said after speaking with Traffic, the improvements to Stetson Hills would be 10 to 15 years out.

#### **Public Comment - None**

**Motion by Commissioner Rickett, seconded by Commissioner Robbins, to recommend approval to City Council the annexation of 14.12 acres as the PTAA Addition No. 1 Annexation based upon the findings that the annexation complies with the Conditions for Annexation, as set forth in City Code Section 7.5.701. The motion passed by a vote of 9-0.**

**Aye:** 9 - Commissioner Briggs, Vice Chair Foos, Commissioner Hensler, Commissioner Cecil, Commissioner Rickett, Chair Slattery, Commissioner Robbins, Commissioner Sipilovic and Commissioner Casey

**8.C.** [ZONE-24-0006](#) The establishment of MX-M/AP-O (Mixed-Use Medium Scale with Airport Overlay) zone district in association with the PTAA Addition No. 1 Annexation consisting of 14.12 acres located southeast of the Stetson Hills Boulevard and North Marksheffel Road intersection. (Legislative)

**Presenter:**  
Gabe Sevigny, Planning Supervisor, Planning and Neighborhood Services

**Attachments:** [7.5.704 ZONING MAP AMENDMENT \(REZONING\)](#)

**Motion by Commissioner Rickett, seconded by Commissioner Robbins, to recommend approval to City Council the zone establishment of 14.12 acres as MX-M/AP-O (Mixed-Use Medium Scale with Airport Overlay) based upon the findings that the request complies with the criteria for zoning establishment as set forth in City Code Section 7.5.704. The motion passed by a vote of 9-0.**

**Aye:** 9 - Commissioner Briggs, Vice Chair Foos, Commissioner Hensler, Commissioner Cecil, Commissioner Rickett, Chair Slattery, Commissioner Robbins, Commissioner Sipilovic and Commissioner Casey

**8.D.** [LUPL-24-0005](#) Establishment of the PTAA Charter School Land Use Plan for a proposed School, Elementary or Secondary, consisting of 14.12 acres located southeast of the Stetson Hills Boulevard and North Marksheffel Road intersection. (Legislative)

**Presenter:**  
Gabe Sevigny, Planning Supervisor, Planning and Neighborhood Services

**Attachments:** [7.5.514 LAND USE PLAN](#)

**Motion by Commissioner Rickett, seconded by Commissioner Robbins, to recommend approval to City Council the PTAA Charter School Land Use Plan based upon the findings that the proposal complies with the review criteria for Land Use Plans as set forth in City Code Section 7.5.514. The motion passed by a vote of 9-0.**

**Aye:** 9 - Commissioner Briggs, Vice Chair Foos, Commissioner Hensler, Commissioner Cecil, Commissioner Rickett, Chair Slattery, Commissioner Robbins, Commissioner Sipilovic and Commissioner Casey

**Astrozon Cultivation**

**8.E.** [UVAR-24-0002](#) A Use Variance to allow the establishment of a Medical Marijuana Cultivation Facility consisting of 2.4 acres located at 3758 Astrozon

Blvd. (Quasi-Judicial)

Presenter:

Allison Stocker, Planner II, Planning and Neighborhood Services

**Attachments:** [UVAR-24-0002 Staff Report Draft ADS 20240726](#)

[Attachment 1 Project Statement](#)

[Attachment 2 Land Use Statement](#)

[Attachment 3 Ordinance 83-88 Establishing Planned Provisional Zone](#)

[Attachment 4 Vicinity Map](#)

[Attachment 5 Public Comments](#)

[UVAR-24-0002 Presentation](#)

[7.5.527 USE VARIANCE](#)

### **Astrozon Cultivation**

Allison Stocker, Planner II, presented the Astrozon Cultivation Facility UseVariance located at 3758 Astrozon Boulevard. It is currently a Mixed-Use Large Scale Zone District, with a Plan Provisional Overlay, Airport Overlay and Streamside Overlay. This is a re-establishment of a medical marijuana cultivation facility within an existing commercial center. The medical marijuana cultivation license was issued in July 2015 and the Planned Provisional Overlay restrictions were not applied to the prior license holder. During pre-application meeting and further review, it was found to be non-compliant and required a use variance to re-establish on site. Standard public notice was sent out and two comments were received. Both were neighboring commercial properties who were concerned with ongoing crime in the area. Agency review was completed, and no comments were received. Staff finds the application meets the review criteria.

### **Commissioner Comments**

Commissioner Rickett asked if this was one piece of the building or if the entire building is to be used for the cultivation. Ms. Stocker said it is a portion of the building and referred to the applicant for further details. Commissioner Rickett asked if any legal or code enforcement issues have taken place at the previous cultivator of the space. Ms. Stocker said none that were brought to her attention.

Commissioner Robbins asked if the applicant was still growing without a license. Ms. Stocker said the previous license holder received their

license in 2015 and relinquished the license to the Clerk's office in 2023. During that period of time, they were legally growing due to having Zoning permission to do so, even though that was an error. Based on the overlay district they should not have been, but because Zoning provided permission, it was treated as a legal use.

Commissioner Casey said criteria number two states, if it is not approved, the property, or structure cannot yield any beneficial use and asked if it could not be used for any other purposes. Ms. Stocker said that section does speak to the decline in the ability to use, however, it may not be a literal interpretation. The commercial center has had challenges keeping occupancy and there could be an argument that denial of the use variance might hinder the ability to maintain full occupancy. Commissioner Casey asked if it might be stigmatized due to it being a grow house prior and no one wants to use it for other purposes. Ms. Stocker said she did not know the context of the other occupants in the commercial center.

Commissioner Casey said criteria number six states the applicant has no other option for legalizing the purposed use on site aside from completing a zone change application and asked if that was the applicant's other option. Ms. Stocker said that is correct.

Chair Slattery asked if a conditional use permit for the property was needed or if it is incorporated in the use variance. Ms. Stocker said the use variance would supersede the conditional use.

Commissioner Briggs asked if the overlay had been rescinded. Ms. Stocker said the only way to do that would be to go through the zone change process.

### **Applicant Presentation**

Ryan Moore, representative of Astrozon Cultivation, presented his application for the use variance. Mr. Moore is asking to relocate and scale down operations in order to be profitable. He said the facility would be for medical cannabis cultivation only. There is no intention of cultivating recreational marijuana or retail options. He said the floor plan would stay the same and the only addition will be a door to separate the two units. He said with retails shifting to online sales, the owner of the building has difficulty keeping the units occupied. Mr. Moore said they were two weeks late from being "grandfathered in". The traffic will go down in the area with

this facility being cultivation only. There were no complaints when the prior business was in operation, and this will help the community with zero impact on the property. Mr. Moore said the restrictive ordinance severely restricts the businesses that are able to be in the property, even when the same type of businesses were there previously.

**Commissioner Comments:**

Commissioner Rickett asked if the facility currently has the appropriate filtration and odor reduction in the HVAC system. Mr. Moore said it is separate from the HVAC system and a carbon filtration system is used, which is more economical.

Commissioner Cecil asked why a zone change was not pursued instead, given it would have benefited the land more by removing the restrictions that the provisional overlay has on the property. Mr. Moore said the landlord is not aware of some of these items and is stuck in his ways. Ms. Stocker said, from a planning perspective, re-zoning could have larger implications and possibly when the ordinance was originally passed it was done so deliberately. The restrictions could have been from neighborhood conversations when the property was re-zoned from R-5 to C-6.

Commissioner Hensler asked if the variance will stay with this business. Ms. Stocker said yes. Mr. Sevigny added that typically it would stay with this business, however, motions can be adjusted to state the variance stay with the specific business and operation in the event the business ceases operation, then the variance is no longer in place. He also noted that the use variance is only allowing this specific use whereas the zone change is not as specific. Commissioner Hensler asked what the recommendation is from staff on whether a variance should stay with the business or location. Mr. Sevigny said staff does not make those recommendations, only if they meet the criteria. This application is here today because it is an existing structure with an existing use, staff felt the application met criteria.

Commissioner Briggs asked if a motion can be added in the event the applicant wanted to add retail in the future. Ms. Stocker said a condition of record could be attached to the recommendation. Trevor Gloss, City Attorney said his interpretation of the use variance is only for medical marijuana cultivation and if the applicant wanted to switch over to retail

sales in the future, they would have to get a new use variance.

Commissioner Briggs asked the applicant if they are currently at the new location. Mr. Moore said not until the use variance is passed.

Vice-Chair Foos asked if there have ever been complaints with the odor.

Mr. Moore said there are more complaints about the port-a-potty business next to them.

Commissioner Briggs said the overlay needs to be removed first and other applicants have been denied in the past due to staff errors.

Chair Slattery said this is a building owner situation where a zone change, and removal of the overlay could affect the other businesses. The use variance would be simpler with the established business.

Commissioner Cecil asked Mr. Gloss to confirm if all the criteria should be met in order to approve the application. Mr. Gloss said yes and reminded the Commissioners that this is a recommendation to City Council, and they would make the final decision. Commissioner Cecil said the business model is good, and property loss would not be triggered due to not having the business there. It is unlikely that the property could not yield any other beneficial use. Commissioner Cecil will not be supporting a recommendation of approval.

Commissioner Casey asked if this is not approved, what is the timeline for a zone change. Ms. Stocker said re-zoning applications have a higher threshold for review and require more labor and materials, which would incur additional costs. There would be a two-to-three-month administrative review period. The application would also go back to City Planning Commission and City Council.

Commissioner Casey asked if the applicant could do the zone change just being a tenant or would the property owner need to. Ms. Stocker said the applicant could if they have permission from the property owner. A general-owner authorization form would need to be submitted, allowing the applicant to represent them in the zone change application. Commissioner Casey asked if the zone change would apply to the entire property or the parcel. Ms. Stocker said it would apply to the entire property.

Commissioner Hensler said a zone change is not needed, and she is in

favor of supporting the application as it stands.

Katie Carleo, Acting Assistant Director, said spot zone changes are not recommended, this application is a specific use to this building.

Vice Chair Foos said his concern was about odors, however, he feels that the smells will be contained.

Commissioner Rickett said when a grow facility is changed to different business, there is a large investment to clear the materials. This is good for the building owner and applicant and feels that it meets the criteria.

#### **Public Comment - None**

**Motion by Commissioner Rickett, seconded by Commissioner Hensler, to recommend approval to City Council the Use Variance to establish the Medical Marijuana Cultivation Facility based upon the findings that the request complies with the criteria as set forth in City Code Section 7.5.527. The motion passed by a vote of 7-2.**

**Aye:** 7 - Vice Chair Foos, Commissioner Hensler, Commissioner Rickett, Chair Slattery, Commissioner Robbins, Commissioner Sipilovic and Commissioner Casey

**No:** 2 - Commissioner Briggs and Commissioner Cecil

## **9. Presentations**

## **10. Adjourn**